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91-1891

Supreme Court, U.S.
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CASE NO.:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

ELINOR S. KING
Petitioner

v.

L. FOSTER JAMES
STEPHEN A. FERRADINO
JOHN A. SIMONE, JR.
JAN H. PLUMADORE
JOHN AUSTIN
JOHN J. WARNER, JR.
Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Elinor S. King
Petitioner - Pro se
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Troy, New York 12180
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QUESTIONS PRESENTED FOR REVIEW

Do judges have judicial immunity for their actions, when they deprive a person of their property and place a personal obligation upon that person, knowing he lacks personal jurisdiction over said person and knowing he lacks subject matter jurisdiction over the issues before him as the State Constitution specifically deprives him of jurisdiction? Does the statute of limitations begin to run when the fraud is committed or when the fraud is discovered? Does the Eleventh Amendment afford judges immunity when the act in clear absence of all jurisdiction? Are the Younger doctrine and the Rooker-Feldman doctrine applicable to cases where litigant is being denied their civil rights to due process and equal protection of the law?

LIST OF ALL PARTIES

I certify that the following comprise all interested persons known to Petitioner:

Elinor S. King - Petitioner pro se

Respondents

L. Foster James,
Stephen A. Ferradino,
John A. Simone, Jr.,
Judge Jan H. Plumadore,
Judge John Austin,
John J. Warner, Jr.,

Attorney: New York State Attorney
General Robert Abrams
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Elinor S. King
Petitioner - Pro se

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OFFICIAL COURT OPINIONS

The United States District Court issued its Decision and Order signed on November 29, 1991 and entered on November 29, 1991, (91-CV-0952) determining the judges had judicial immunity for their actions and that Petitioner failed to allege specific facts sufficient to indicate a deprivation of rights has occurred.

The United States Court of Appeals for the Second Circuit affirmed the District Court's Decision and Order on May 8, 1992 (91-9317).

STATEMENT OF JURISDICTION

This Petition for a Writ of Certiorari is sought from a final Order of the United States Court of Appeals, Second Circuit, issued May 8, 1992, (91-9317) and is herein filed within the required ninety (90) day period.

This court has jurisdiction pursuant to 28 U.S.C. Section 1254.

CONSTITUTIONAL PROVISIONS AND STATUTES

U.S. CONST. Art. VI, Section 2.

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

U.S. CONST. Amendment Five

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor

shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. Amendment Six.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy trial by an impartial jury of the State and district wherein the crime shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of

Counsel for his defense.

U.S. CONST. Amendment Fourteen.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. Section 1983.

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other

person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. Section 1985.

Conspiracy to interfere with civil rights.

(2) If two or more persons in any state or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of having so attended or testified, or to

influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of laws, or to injure him or his property for lawfully enforcing or attempting to enforce, the right of any person, or class of persons, to equal protection of the laws;

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the

premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State of Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or

advocacy; in any case of conspiracy set forth in this section, of one or more persons engage therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

STATEMENT OF CASE

This is an appeal from a final order signed and filed by the Second Circuit Court of Appeals on May 8, 1992 affirming the decision and order of the District Court signed and entered November 29, 1991 determining that the judges had judicial immunity for their actions, that Petitioner failed to specifically state the deprivation of Constitutional rights. District Court had jurisdiction pursuant to 28 U.S.C. 1343.

FACTS

The family court judges knew that they had no authority to place a personal obligation upon Petitioner to support her son, Mr Collins and his former wife, Ms Carella, and to give exclusive possession of Petitioner's real property to Ms Carella.

The family court judges also knew that they lacked jurisdiction over the issues of custody, visitation and support between Petitioner's son and Ms Carella as there has never been a referral of the issues to the family court from the supreme court as required by the New York State Constitution.

At an EBT held on April 19, 1989 Ms Carella, when asked, did not deny that she was having ex parta communications with Judge James concerning the family court proceedings.

Petitioner's son, Charles E. Collins III, and Ms Carella were married on June 28, 1975 and had three children of the marriage. On October 3, 1980 they entered into a Separation Agreement which gave Ms Carella custody of the children and visitation rights to Mr Collins as well as providing for support of Ms Carella and the children. On March 27, 1981 they entered into an Amended Separation Agreement concerning support. On July 27, 1981 Judge Amyot signed a New York State Judgment of Divorce which was entered on August 3, 1981 in Saratoga County which incorporated but did not merge the agreements. Said agreements were drawn up by Ms Carella's attorney and Mr Collins was not represented by counsel.

In 1984, Petitioner, her son and her husband purchased a house in Saratoga County with each owing a 1/3 interest

in the property and the deed was filed on June 14, 1984.

May 7, 1985 Judge Ferradino modified the Supreme Court Divorce Decree by ordering Mr Collins to pay for the mortgage and utilites on the house for the benefit of Ms Carella in addition to the support ordered by the Supreme Court.

On April 22, 1986 Judge James gave Ms Carella exclusive possession of the property. Petitioner **was not** a party to the proceeding and therefore Judge James lacked personal jurisdiction over her. Judge James is not authorized as a family court judge, to determine possession or title of real property. Supreme Court Judge Plumadore specifically so ruled on December 11, 1989.

On April 22, 1986, after awarding Ms Carella exclusive possession of the house, Judge James transferred the issue

of support to the Schenectady County Hearing Examiner.

In November of 1986 Mr Collins sold his 1/3 interest in the house to Petitioner and received credit for monies owed to her.

March 5, 1987 Hearing Examiner Warner issued his decision and order which changed the terms of the Supreme Court Decree.

April 7, 1987 and April 8, 1987 Judge James held a trial to determine if Mr Collins had violated the Family Court support orders. As documented by the transcripts, Mr Collins was not informed of his rights as required by both state and federal law including his right to counsel, was not allowed to cross-examine Ms Carella on her testimony, was allowed only to present evidence and documentation for the period of

October 3, 1986 to April 7, 1987 while Mr Morsillo and Judge James questioned Mr Collins and Ms Carella covering the period of 1981 to April 7, 1987, and Mr Collins was not allowed to object to the questions being asked of him, etc.

On April 15, 1987 Judge James sentenced Mr Collins to jail.

September 17, 1987 Mr Warner issued his Finding of Fact and recommended that Mr Collins be sentenced to jail for violation of support. Testimony showed that Mr Collins earned $400.00 per week with a net of $293.00 or $1259.00 per month. He was ordered to pay $725.00 mortgage, $284.00 support, $60.00 arrears, $150.00 for utilities for a total of $1219.00 which does not include past due medical bills, future medical bills, medical insurance and past due electric bills Mr Collins was ordered to pay. Mr Collins

was left with just $40.00 per **month** to pay these added bills and to live on.

January 25, 1988 Surrogate Court Judge Simone sentenced Mr Collins to jail for violation of the family court support orders.

January 26, 1989 the Appellate Court ruled that Mr Collins could not afford to pay the amount ordered by the family court and that the family court could not rely on Petitioner's assets in determining her son's support obligation.

July, 1989 Petitioner sued Mr Collins and Ms Carella in Supreme Court in order to gain possession of the real property.

September 8, 1989 Judge James ordered Mr Collins to pay a flat $120.00 per week and specifically stated that his potential was $20,000.00 per year. Judge James then made the order retroactive

back to December 1987 as required by FCA § 449 without giving Mr Collins full credit for support paid as required. This placed Mr Collins over $4,000.00 in arrears when he should have had over a $14,000.00 credit. This was in order to prejudice the Supreme Court proceeding by giving Ms Carella a reason to claim there was a fraudulent conveyance between Petitioner and Mr Collins.

In order to circumvent the Appellate Court ruling concerning Mr Collins' support obligation Supreme Court Judge Plumadore on February 28, 1990 refused to give Petitioner back her property relying on Judge James' decision placing Mr Collins over $4,000.00 in arrears knowing that Judge James lacked jurisdiction and Mr Collins did not receive full credit for all support paid pursuant to court order. Judge Plumadore ruled because of

the arrears, Ms Carella was entitled to claim a fraudulent conveyance. Yet, ignoring the fraud in Ms Carella receiving exclusive possession of the house. With out a hearing or a trial Judge Plumadore ruled that Ms Carella could remain in the house, holding Mrs King liable for Mr Collins' support as she has to pay $850. per month mortgage on the house. Judge Plumadore has refused to hold a hearing or to set a date for interrogatories to be completed by and is refusing to allow Petitioner or Mr Collins to claim the money paid on the mortgage to be used against Mr Collins' support obligation. From September 1989 to the present is 30 months. At $516.00 per month support is $15,480.00 + $4,000.00 arrears equal $19,480. Mortgage payment of $850.00 per month is a total of $25,500.00 minus support of $19,480 leaves $6,020.00 that has

been over paid. Thereby, ruling Ms Carella is entitled to live in the house rent free and receive support.

April 30, 1990 Mr Collins filed a violation of visitation petition and a modification of support petition in the family court naming Ms Carella and Judges James and Ferradino as Respondents.

May 9, 1990 Judge James signs Judge Austin's name to an Order to Show Cause for violation of support, after he had been removed from the case by an Administrative Order.

May 25, 1990 Mr Collins appeared before Judge Austin for violation of support based upon Judge James' September 8, 1989 decision. Mr Collins was not informed of his rights including his right to counsel. Judge Austin refused to open the courtroom to the public in violation of his 6th Amendment right as he faced six

months incarceration.

July 30, 1990 Judge Austin dismisses all of Mr Collins' petitions leaving only Ms Carella's violation petition. He again fails to inform Mr Collins of his rights and again refuses to open the court to public.

August 16, 1991 Mr Collins sends a letter to Judge Austin stating that he lacked jurisdiction pursuant to the New York State Constitution, the Family Court Act and supporting case law.

August 20, 1991 Judge Austin replies stating Mr Collins' arguments are "with out merit" and refuses to state upon what he based his jurisdiction as he had a personal interest in determining he had jurisdiction because of Mr Collins' federal lawsuit which was filed on March 28, 1991.

Petitioner's Complaint was filed on

August 22, 1991 and Judge Austin was served on August 29, 1991.

September 13, 1991 Judge Austin issued a warrant for Mr Collins' arrest because he refused to participate in a trial over which Judge Austin knew he lacked jurisdiction and had a personal interest in seeing that Mr Collins would not be able to argue his case before the U.S. Court of Appeals and to take out retribution against Petitioner for filing this lawsuit against him.

ARGUMENTS

Petitioner respectfully requests that this court grant a Writ of Certiorari in this case as the United States Court of Appeals for the Second Circuit has decided a federal question in a way that conflicts with applicable decisions of this Court, other federal circuit courts, the New York State Court of Appeals as well as the Appellate Courts of the State of New York.

The Second Circuit in entering its decision relied upon the District Court's decision that the judges had immunity based on Stump v. Sparkman, 435 U.S. 349, 362-64 (1978) without addressing the the issues of whether the judges were acting within the scope of their subject matter jurisdiction and whether the judges had personal jurisdiction over Petitioner in order to place a personal

obligation upon her to support Mr Collins and Ms Carella and when they gave exclusive possession of Petitioner's property to Ms Carella.

Rankin v. Howard, 633 F.2d 844 (9th Cir. 1980) at 848, stated:

> ...When the Supreme Court first formulated the "clear absence" standard, however, it stated that the principal of immunity applied when there was "jurisdiction of **both** subject and person." Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 352 (1872). 20 L.Ed. 646.

Several courts have repeated this language indicating in dicta that both subject matter and personal jurisdiction are necessary to confer judicial immunity. See, Duba v. McIntyre, 501 F.2d 590, 592 (8th Cir.1974), cert denied, 424 U.S. 975, 96 S.Ct. 1480, 47 L.Ed2d 745 (1976) ("the judge must have both jurisdiction over the person and subject matter if he is to be immune from suit."); Ryan v.

Scoggin, 245 F.2d 54, 58 (10th Cir. 1957) (judge is immune for order or judgment when "court has jurisdiction of the subject matter and of the parties").

The thrust of Appellant's Complaint is that the family court judges lacked **both** personal jurisdiction over Petitioner and subject matter jurisdiction over the issues before them. The family court judges and hearing examiner placed a personal obligation on Petitioner to support her son, Charles E. Collins, III and her son's ex-wife Ms Carella. They have also deprived her of her property. The supreme court judge, after ruling that Ms Carella has "no interest equivalent to or impinging upon title", continues to deprive Petitioner of possession of her property by refusing to proceed with the case, in order for the family court judges to sentence Mr Collins to jail so that Ms

Carella can be put in a superior bargaining position. By refusing, for over two years, to order due dates for discovery to be completed by so that a trial can be held in order for Judge Austin to sentence Mr Collins to jail in a **closed courtroom** based upon an order that the family court judge had **no** authority to issue in the first place is a denial of due proces and equal protection of the law and a deliberate attempt to impede and hinder the due course of justice.

Personal Jurisdiction

Rankin v. Howard, 633 F2d 848:

> [5] **An absence of personal jurisdiction may be said to destroy "all jurisdiction"** because the requirements of subject matter and personal jurisdiction are conjunctional. Both must be met before a court has the authority to adjudicate the rights of parties to a dispute.
>
> [6] **If a court lacks jurisdiction over a party, then it lacks "all jurisdiction" to adjudicate that party's rights, whether or not the**

subject matter is properly before it. See, e.g. Kulko v. Superior Court, 436 U.S. 84, 91, 98 S.Ct. 1690, 1696, 56 L.Ed.2d 132 (1978) **("[i]t has long been the rule that a valid judgment imposing a personal obligation or duty in favor of the plaintiff may be entered only by a court having jurisdiction over the person of the defendant")...;**

[7] Because of the limits of personal jurisdiction constrain judicial authority, **acts taken in the absence of personal jurisdiction do not fall within the scope of legitimate decisionmaking that judicial immunity is designed to protect.** See, Gregory v. Thompson, 500 F.2d at 63. **We conclude that a judge who acts in the clear and complete absence of personal jurisdiction loses his judicial immunity.**

Dykes v. Hoseman, 743 F.2d 1488, 1497, (11th Cir. 1984) held:

[13] We agree with the Rankin court's analysis. We point out in addition, that **the rational for the limitation on judicial immunity when subject matter jurisdiction is lacking applies with equal force when personal jurisdiction is lacking.** In Bradley v. Fisher, the court stated that where there is no jurisdiction over the subject matter, any authority exercised is a usurped authority. 13 Wall. at 351, 20 L.Ed. 646. Although the modern conception of

personal jurisdiction generally refers to due process. see, e.g. International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945), the foundation of personal jurisdiction has always been the court's power to act. McDonald v. McBee, 243 U.S. 90, 37 S.Ct. 343, 61 L.Ed. 608 (1917); Pennoyer v. Neff, 95 U.S. 714, 24 L.Ed. 565 (1898). **When the court acts without personal jurisdiction, its authority is as much a usurped authority as when the court acts without subject matter jurisdiction.**

The State argued p. 8-9 of brief:

> ...King **was not** a party to these proceedings, and -- with the possible exception of the orders regarding Wooddale property -- no judgments or orders ensuing from these proceedings required or restrained action by King.

Judge James in his April 15, 1987 decision sentencing Appellant's son to jail for violation of of support stated:

> ...that from November 1986 to the present time there were no periods when the Petitioner was without income; that the Petitioner possesses unused assets particularly the ability to borrow, since his business related debts are now substantially satisfied,....

Mr Collins had income but he did not have **sufficient** income to pay what the family court had ordered nor did Judge James state what Mr Collins' assets were or where he could obtain funds to pay his support.

Judge Simone in his January 25, 1988 decision sentencing Petitioner's son to jail stated:

> ...The Court is convinced that the respondent does have funds available to him to comply with the order and/or that he is capable of obtaining such funds....

Judge Simone never stated what funds were available to Mr Collins or where he could obtain such funds.

The Appellate Court in its ruling Carella v. Collins, 144 AD2d 78:

> ...Family Court's emphasis on respondent's alleged access to funds **is not** well founded in this record. There was much testimony concerning the financial status of respondent's mother from which the court could have assumed that funds were avail-

> able to him, including the fact that respondent had resided with his mother rent free from 1981 and that she appears willing to offer financial assistance to him. However, the mother's financial status cannot be said to be respondent's status.
>
> In the casse at bar, the record does not demonstrate a failure to make support payments accompanied by an absence of any attempt to modify the order of support, nor does it demonstrate the failure to use **any part** of respondent's wages to make support payments while regularly employed as to constitute prima facia evidence of willfullness...

Had Petitioner been willing to make funds available to Mr Collins he would not have been sentenced to jail by Judge James, Hearing Examiner Warner and Judge Simone for violation of support.

The State has admitted that Judge James **did not** have personal jurisdiction over Petitioner, as she was not a party to the family court proceeding, when he gave Ms Carella exclusive possession of her real property. The State has admitted

that Petitioner **was not** a party to the family court proceedings and therefore had no authority to use Petitioner's assets to determine her son's support obligation and then threaten her with the incarceration of her son if she did not loan him money to pay his support obligation. The judges in their decisions did not use Petitioner's name directly as they **knew** they had **no authority** to place a personal obligation upon her to support Mr Collins and Ms Carella. So in order to place the personal obligation upon her without having the authority to do so, they ordered her son to pay more in support than he could afford and then threatened her son with incarceration and sentenced him to jail in order to force and intimidate Petitioner into paying her son's support obligation in order to keep

him out of jail.

Petitioner has clearly documented that Family Court's intent was to place a personal obligation upon her which they did and the Appellate Division's January 26, 1989 order supports this contention 100%. Even the District Court, as documented in Petitioner's brief, found she was aggrieved by these Family Court decisions and orders. Not only did the Family Court orders deprive her of possession of her real property but they have forced Petitioner to pay approximately $850.00 per month on the house or loose the house to foreclosure and/or taxes. These Family Court orders have prevented Petitioner from selling the house and has caused her great hardship in the Supreme Court in trying to get possession of her property back while

allowing Ms Carella to live in the house rent free. As documented and not denied by the state, Petitioner is being deprived of her right to a hearing and trial to get her property back and the Family Court is interfering with the Supreme Court case by issuing orders to place Ms Carella in a superior position in order to force Petitioner to support Ms Carella while knowing they lack jurisdiction over the issues between Mr Collins and Ms Carella.

Subject Matter Jurisdiction

Rankin v. Howard 633 F2d 849 held:

> [10] **But when a judge knows he lacks jurisdiction, or acts on the face of clearly valid state statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost** See Bradley v. Fisher, 80 U.S. (13 Wall) at 351 (" **when want of jurisdiction is known to the judge, no excuse is permissible**"); Turner v. Raynes, 611 F.2d 92, 95 (5th Cir. 1980) (Stump, is consistent with the view that "a clearly inordinate

exercise of unconferred jurisdiction by a judge - one so crass as to establish that he embarked on it either knowingly or recklessly - subjects him to personal liability")

Dykes v. Hoseman, 743 F.2d 1488 (11th Cir. 1984) at 1495 held:

[11] **It is clear that a judge who acts in the absence of jurisdiction may be held liable for his judicial acts.** Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099, (1978);

Bauers v. Heisel, 361 F.2d 581 (3rd. Cir. 1966) at 591 held:

...Because immunity is conferred on an individual solely by virtue of the office he holds, reason required us to adopt a rule which does not provide immunity for those acts which are done clearly outside the authority or jurisdiction of the office.

United States v. State of California, 504 F.2d 750 (1974) at 754 held:

[3,4] ...Nevertheless the government argues that this case can be brought within the exceptions to Section 218. This contention must be considered in light of two important rules of statutory construction: 1) **jurisdictional statutes are to be strict-**

> **ly construed.** "[I]n construing a definite procedural provision we do well to stick close to the text and not import argumentative qualifications from broad, unexpressed claims of policy". Utah Junk Co. v. Porter, 328 U.S. 39, 44, 66 S.Ct. 889, 892, (1946); 2) **exceptions to the general provisions of a statute are also to be strictly construed.** See, United States v. First City National Bank, 386 U.S. 361(1967)

N.Y.S. CONST., Art. 6, § 1, creates the Family Court as part of the Unified Court System of New York. Art. 6, § 13(a) establishes the Family Court of the State of New York. Article 6, § 13 (b) and (c) state the jurisdiction:

> b) The family court shall have jurisdiction over the following classes of actions and proceedings which shall be originated in such family court in the manner provided by law: ...(2) the custody of minors **except** for custody incidental to actions and proceedings for marital separation, divorce, annulment of marriage and dissolution of marriage; ...(4) the support of dependants **except** for support incidental to actions and proceedings in this state for marital separation, divorce, annulment

> of marriage or dissolution of marriage; ....
>
> c) The family court shall also have jurisdiction to determine, with the same powers possessed by the supreme court, the following matters **when referred to the family court from the supreme court**: habeas corpus proceedings for the determination of the custody of minors; and in action and proceedings for marital separation, divorce, annulment of marriage and dissolution of marriage, applications to fix temporary or permanent support and custody, **or** applications to enforce judgments and orders of support and of custody, or applications to modify judgments and orders of support and of custody which may be granted only upon the showing to the family court that there has been a subsequent change of circumstances and that modification is required.

The Family Court is a court of **limited** jurisdiction and has power to entertain only those **applications which are specifically enumerated in the state constitution** or in appropriate statute. Roy v. Roy, 109 A.D.2d 150, (1985).

The State Constitution **does not**

authorize the family court to determine either possession or title of property. Therefore, Judge James had no authority to give Ms Carella exclusive possession of the real property owned in part by Petitioner.

The State Constitution is specific in stating that Family Court has no authority to enforce or modify any court order concerning custody, visitation or support that has not been referred to it by the supreme court. It must also be concluded that family court cannot even enforce or modify its own orders as the State Constitution refers to "court orders" and does not differentiate between family court orders and supreme court orders.

Greene v. Greene, 32 A.D.2d 523, 299 N.Y.S.2d 85 (1st Dep't. 1969) held:

...The parties were divorced by decree entered in New York Supreme Court June 13, 1967. That decree makes provision for custody of the minor children and for the father's (appellant herein) visitation rights

[1] The Family Court has jurisdiction to determine custody of minors **only** when such jurisdiction is referred to it by the Supreme Court (New York State Constitution, Article VI, § 13, subds. b(2) and c; Section 115, subdivision (b) of the Family Court Act.)

[2] Concededly the Supreme Court did not refer the issue of visitation to the Family Court. It is therefore clear that it **did not** have jurisdiction to change the father's visitation rights. **The proper and only forum to petition for such a change, if warranted, is the Supreme Court.**

Harrington v. Harrington, 60 A.D.2d 982, 401 N.Y.S.2d 342, at 343 (1978):

Under section 447, subdivision (a) of the Family Court Act family court is granted power to make an order of custody or visitation but only "[i]n the absence of an order of custody or visitation entered by the supreme court". **The restriction of the power to instances where there is no order of the supreme court compels the conclusions that where there is such**

an order of supreme court, family court may not modify it in the absence of express permission.

Inasmuch as family court lacked authority to entertain the proceeding to modify the custody and visitation provisions of the divorce decree, the order is reversed and the petition dismissed without prejudice to **commencement of an appropriate proceeding in supreme court. The provisions for child support** and counsel fees **may not stand because both are predicated on the court having jurisdiction to modify the custody and visitation provisions of the decree.**

The Court of Appeals has specifically so ruled in Bolatin v. Bolatin, 22 N.Y.2d 794, affg. 29 A.D.2d 534 concerning Family Court Act § 447.

Section 461(a) of the Family Court Act concerning support states:

> A separation agreement, a decree of separation, and a final decree or judgment terminating a marriage relationship does not eliminate or diminish either parent's duty to support a child of the marriage under section four hundred thirteen of this article. In the absence of an order of the supreme court or of

> another court of competent jurisdiction requiring support of the child, the family court may entertain a petition and make an order for its support.

As in Bolatin, supra and Harrington, supra, it must be concluded that where there is an order of support by the supreme court, family court does not have jurisdiction to make an order.

As Mr Collins' New York State Supreme Court Divorce Decree provided for custody, visitation and support and the issues of custody, visitation and support **have never been referred** to the Family Court by the Supreme Court the Family Court has acted in complete absence of all jurisdiction.

The family court judges and hearing examiner clearly knew the jurisdiction of the Family Court as defined by the State Constitution, concurring state statutes

and supporting case law. Therefore, they have no excuse for violating the jurisdiction vested in the Family Court by the State Constitution.

CPLR 2221 states: Motion affecting prior order:

> (a) A motion for leave to renew or to reargue a prior motion, for leave to appeal from, or to stay, vacate **or modify an order** shall be made, on notice to the judge who signed the order, unless he is for any reason unable to hear it, except that:
>
> > 1. if order was made upon default such motion may be made, on notice, to any judge of the court; and
> >
> > 2. if the order was made without notice such motion may be made, without notice, to the judge who signed it, or, on notice, to any other judge of the court.
>
> A motion made to other than a proper judge under this rule shall be transferred to the proper judge.

As Mr Collins had a Supreme Court order concerning custody, visitation and

support, under CPLR 2221 the family court had no authority to modify the Supreme Court Decree and should have transferred any petitions to modify the Decree to the judge who signed the Supreme Court order or to another judge of the Supreme Court.

Maestri v. Jutkofsky, 860 F.2d 50, (2nd Cir. 1988), cert. denied 109 S.Ct. 1132, 103 L.Ed2d 193 (1989) held at 52:

> [1] ...When a judge clearly lacks jurisdiction over the subject matter, "any authority exercised is a usurped authority". Bradley v. Fisher, 80 U.S. (13 Wall) 335 (1871)
>
> [3] ...Finally, Jutkofsky has not cited, nor have we found, any case in which a judge who had exercised authority outside the territory properly within his jurisdiction was nevertheless held to be entitled to judicial immunity.
>
> [4] For a judge to assume authority outside the geographic bounds of his office is the kind of clear judicial usurpation which cannot be condoned by any grant of immunity. No public policy would be served by granting immunity for such arrogant excesses of authority.

Petitioner has alleged that Hearing Examiner Warner exceeded the geographical bounds of his authority.

Schenectady County Hearing Examiner Warner's appointment authorized him to hear **only** Schenectady County Family Court matters while this was a Saratoga County Family Court matter.

Family Court Act § 174 states:

> The family court in a county may for good cause transfer a proceeding to a family court in any other county where the proceeding **might have been originated and shall transfer a proceeding laying venue in the wrong county to a family court in any county where the proceeding might have been originated.**

The applicable venue provision, Family Court Act § 421, did not authorize the proceeding to be transferred to Schenectady County as neither Mr Collins or Ms Carella resided in Schenectady County.

Judge Simone is a Surrogate Court

Judge whose subject matter jurisdiction is to hear and determine matters concerning adoption and estates. Here, Judge Simone held a trial for violation of a Family Court support order and sentenced Mr Collins to jail. Even if he had been assigned to the family court he would still have been without jurisdiction as family court has no authority to enforce a support order without a referral from the supreme court.

New York State Judiciary Law Section 14: Disqualification of judge by reason of interest or consanguinity

> A judge shall not sit as such in, or take part in the decision or, an action, claim, matter, motion or proceeding to which he is a party, or in which he has been attorney or counsel or in which <u>he is interested</u>...

<u>Casterella v. Casterella</u>, 1978, 65 A.D.2d 614, 409 N.Y.S.2d 548 held:

2. Statute requiring disqualification of judges on basis of interest or bias is jurisdictional. Judiciary Law § 14.

Cummings v. Christensen, 1981, 109 Misc.2d 255, 439 N.Y.S.2d 825 held:

2. Statutes requiring disqualification on the basis of interest or bias are jurisdictional in nature, and the parties may not consent that a judge sit as such on a case when the judge is disqualified by operation of a statute

RULES OF CHIEF ADMINISTRATOR OF THE COURTS: PART 100: JUDICIAL CONDUCT

§ 100.3(c) Disqualification (1) A judge shall disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned, ...

Here Judge Austin is facing federal lawsuits by both Petitioner and her son, Mr Collins. Judge Austin has closed the court to the public, lacks subject matter jurisdiction pursuant to New York State Constitution and supporting state statutes and case law, etc.

The State has **not** denied that Judge Austin had a personal interest in issuing a warrant for Petitioner's son's arrest for failure to appear before him because of Mr Collins' refusal to participate in a trial in which he faces 6 months incarceration in a **closed** courtroom and over which Judge Austin knows he has no authority over **any** of the issues between Mr Collins and Ms Carella concerning support, custody and visitation as there has **never** been a referral of the issues to the family court from the supreme court as required by the New York State Constitution as well as supporting state statutes and case law.

Judge Austin had a direct interest in the outcome of the family court proceeding because of the lawsuits filed against him and the other family court judges for issuing court orders that the

State Constitution and state statute specifically deprives them of jurisdiction to issue.

Had Mr Collins shown up to court he faced six months in jail for violating the family court order for support. This trail was to be held behind **closed** doors as Family Court Act § 433 (a) states that "the court **may** exclude the public from the courtroom in a proper case". This is unconstitutional pursuant to the United States Supreme Court. Argersinger v. Hamlin, 92 S.Ct. 2006 (1972) at 2008:

> [1] ..., provides specified standards for "all criminal prosecutions"
>
> One is the requirement of a "public trial". In re Oliver, supra, held that the right to a "public trial" was applicable to a state proceeding even though only a 60 day sentence was involved. 33 U.S., at 272, 68 S.Ct., at 507.
>
> Another guarantee is the right to be informed of the nature and cause of the accusation. Still another, the right of confrontation. Pointer v.

Texas, supra. And another, compulsory process for obtaining witnesses in one's favor. Washington v. Texas, supra. We have **never** limited these rights to felonies or to lesser but serious offences.

In Washington v. Texas, supra, we said, We have held that due process requires that the accused have the assistance of counsel for his defence, that he be confronted with witnesses against him, and that he have the right to a speedy and public trial." 388 U.S., at 18, 87 S.Ct. at 1922. Respecting the right to a speedy and public trial, the right to be informed of the nature and cause of the accusation, the right to confront and cross-examine witnesses, the right to compulsory process for obtaining witnesses, it was recently stated, **"It is simply not arguable, nor has any court ever held, that the trial of a petty offense may be held in secret**, or without notice to the accused of the charges, or that such cases the defendant has no right to confront his accusers or to compel the attenance of witnesses in his own behalf" Junker, The Right to Counsel in Misdemeanor Cases, 43 Wash.L.Rev. 685, 705 (1968).

Petitioner has clearly demonstrated throughout the Complaint that her son's Sixth Amendment Rights have been consis-

tently violated by the New York State Judiciary in order to threaten and/or force and/or intimidate Petitioner into supporting Mr Collins and Ms Carella.

Under the law, Mr Collins is entitled to a court of proper jurisdiction, which is being denied as the family court has no authority to enforce or modify **any** court order concerning support, custody and visitation without a referral from the supreme court; right to **assistance** of counsel which means **effective** counsel who will protect his rights and as documented Mr Collins cannot even find out why he cannot see his children nor has counsel taken any action to have the court open to the public; right to call witnesses to testify which the attorney appointed by Judge Austin is refusing to do and the transcripts from the previous trials clearly show that Mr Collins has been

denied his right to cross-examine witnesses on their testimony, denied his right to object to questions being asked and these other trials were also held behind closed doors when Mr Collins was previously sentenced to jail.

Mr Collins has clearly argued this in his Petition for Writ of Certiorari to the U.S. Supreme Court under Docket No. 91-1552 filed on March 27, 1992. The State **did not** deny that Mr Collins' rights are being violated nor has the State denied that the family court judges were not authorized to determine the issues between Mr Collins and Ms Carella pursuant to the New York State Constitution.

This Complaint is not barred by New York's three year statute of limitations.

Briley v. State of Cal., 564 F.2d 849 (1977) at 850, 855.

7. Where civil rights plaintiff has been injured by fraud or concealment and remains ignorant of it without any fault or want of diligence on his part the statutory limitations period does not begin to run until the discovery of the injury. 42 U.S.C.A. § 1983

.....

The established rule, which we apply in this case is that, where a plaintiff has been injured by fraud or concealment and remains in ignorance of it without any fault or want of diligence on his part, the statutory period does not begin to run until the discovery of the injury. Holmberg, supra, 327 U.S. at 397, 66 S.Ct. 582; Hilton, supra, 522 F.2d at 602; ....

The fraud in this case is the fact that the judges have acted in complete absence of all jurisdiction as the New York State Constitution, state statute and case law specifically deprived them of subject matter jurisdiction and the fact that they lacked personal jurisdiction over Petitioner in order to deprive her of her property and to place

a personal obligation upon her to support Mr Collins and Ms Carella.

Petitioner did not discover that Family Court was without jurisdiction to enforce or modify the supreme court order pursuant to the State Constitution, the Family Court Act and case law until 1991.

Petitioner did not discover until 1991 that the court also needed personal jurisdiction over her in order to deprive her of her property and to place a personal obligation upon her to support Mr Collins and Ms Carella.

It can also be argued that Petitioner did not have any tangible proof that the family court judges were relying on her assets in determining Mr Collins support obligation until the Appellate Court ruling dated January 26, 1989 which is within the three year statute of limitations. Even with this decision

Petitioner was not aware that the judges were acting without jurisdiction which deprives them of their immunity.

Judge James awarded Ms Carella possession of the real property on April 22, 1986. It was not until September 13, 1989 when Mr Carola filed his Answering Motion to Ms Carella's Motion to Dismiss the Supreme Court complaint that Petitioner found out that Judge James had no authority to award Ms Carella possession of the property.

Judge Simone sentenced Mr Collins to jail on January 25, 1988. It was never argued in the appeal that Judge Simone, as a Surrogate Court judge, had no authority to hear a family court matter. It wasn't until Mr Collins started his federal action in 1991 that Petitioner found out.

Judge James and Judge Austin's

actions in hindering, obstructing and prejudicing Petitioner's case in the state supreme court are all within the three year statute of limitations as well as Judge Plumadore's actions in allowing them to interfere with the proceeding by issuing orders to put Ms Carella in a superior position without having jurisdiction to issue said orders.

Hofferber v. The First National Bank of Guyman, Oklahoma, 437 F.Supp. 788:

> It is beyond doubt that property rights are protected by the Fourteenth Amendment and violations thereof can be redressed by suit under 42 U.S.C. § 1983. Lynch v. Household Finance Corp., 405 U.S. 538, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972); ...

Acquisition, enjoyment and alienation of property are among those basic constitutional rights protected by Civil Rights Act of 1871. 42 U.S.C.A. § 1983. Privitera v. Town of Phelps, 79 A.D.2d

1, 435 N.Y.S.2d 402. Jones v. Alfred H. Mayer Co., 392 U.S. 409, 432, 88 S.Ct. 2186, 2199.

When Judge James awarded Ms Carella exclusive possession of Petitioner's real property while lacking both personal and subject matter jurisdiction she was denied due process under the Fourteenth Amendment. Petitioner was also denied due process when the judges placed a personal obligation upon her to support Mr Collins and Ms Carella or face the loss of her property to foreclosure and/or taxes or face her son going to jail if she did not pay her son's support obligation.

Petitioner has also demonstrated that she has been denied equal protection of the laws in both the family court proceedings and in the state supreme court proceeding.

Dinwiddie v. Brown, C.A.Tex.1956,

230 F2d 465, certiorari denied 76 S.Ct. 1041, 351 U.S. 971, holds where state officers conspire with private individuals to defeat or prejudice litigant's rights in state court, litigant is thereby denied equal protection of laws by persons acting under color of state law, and cause of action is created cognizable by federal courts under this section.

Petitioner has documented that the family court orders issued by Judge James and Judge Austin were designed to defeat and prejudice Petitioner's supreme court proceeding to gain possession of her property. Because of these family court orders Petitioner has been unable to remove Ms Carella from the premises in order to sell the property. It has been almost three years since Petitioner started the proceeding in order to gain possession of her property.

The District Court and the Court of Appeals relied on the Rooker-Feldman doctrine, that the district court lacks jurisdiction to review state court decisions. Petitioner **is not** asking the federal district court to sit in review of the state court proceedings. The basis of Petitioner's Complaint is that the family court judges lacked both personal jurisdiction over Petitioner as well as subject matter jurisdiction over the issues before them that gave Ms Carrella exclusive possession of Petitioner's real property and placed a personal obligation upon her to support Mr Collins and Ms Carella. As the judges issued their orders in complete absence of all jurisdiction those orders are null and void. Whether or not Petitioner did appeal or did not appeal the family court rulings as one "aggrieved" by the decisions is

not relevant to the case. The question is did the family court judges have **both** personal jurisdiction and subject matter jurisdiction to render their deicisions in the first place. The answer is an emphatic: **NO!** Therefore, they are liable under 42 U.S.C.A. § 1983 for the violation of Petitioner's Constitutional rights to due process and equal protection of the law. Therefore, the Rooker-Feldman doctrine is not applicable.

The Eleventh Amendment is also not applicable to this case. This amendment barres claims for monetary damages against state officials who are acting within their "official" capacities. The family court judges in this case **were not acting within the scope of their jurisdiction or their "official" capacities as they lacked both personal jurisdiction as well as subject matter jurisdiction.**

The federal district court and the Court of Appeals also relied upon the Younger doctrine as there is a pending state court proceeding. First, the violation of Petitioner's constitutional rights by defendants in this action cannot be vindicated in the state court proceeding. The defendants in this action are not parties to the state court proceeding, therefore, the damages that they have caused Petitioner by their actions in clear absence of all jurisdiction is not before the state court.

Second, the only important state issue that seems to be implicated is the State wanting to cover up the illegal actions taken by its employees against Petitioner. The State has already admitted that the family court lacked personal jurisdiction over Petitioner as she was not a party to the family court proceed-

ings when Judge James gave Ms Carella "exclusive" possession of Petitioner's property. She was also not a party to the family court proceedings that used her assets in determining her son's support obligation and then sentenced her son to jail when she refused to come up with the money to pay for her son's support obligation.

Third, Petitioner does not have an avenue open for review of her claims against the judges in the state court proceeding. As documented in the Complaint, the New York State judiciary is covering up and allowing the family court judges to continue to issue orders that have a direct effect upon the state court proceeding while knowing that these judges lack subject matter jurisdiction over the issues upon which they are ruling.

Fourth, Petitioner is relying upon the state laws which the State Judicial System wants to ignore and is refusing to enforce thereby, depriving Petitioner of due process and equal protection of the law as required by the Fourteenth Amendment to the U.S. Constitution.

Federal Courts have a duty to entertain solid claim of unconstitutional restraint by state under color of its law, and **jurisdiction of federal court is not defeated by anything which may occur in state proceedings.** Smith v. State of Kansas, C.A.Kan.1966 356 F.2d 654, certiorari denied 88 S.Ct. 154, 389 U.S. 871.

Schorle v. City of Greenhills, 524 F.Supp. 821, 826, 828 (1981) held:

> [4] ...It is asserted that any individual charged with a criminal offense has a right to be fairly appraised of his constitutional protections and has **a right to have**

the matter heard in a court of proper jurisdiction. The only relief available to such an individual arises under the Civil Rights Act.

...The thrust of plaintiff complaint is that he was repeatedly deprived of certain fundamental rights by the concerted actions of the officials and employees of the City of Greenhills and **by a judge of a court that had no jurisdiction to hear the matter.** The continuum of incidents inextricably entwined, which culminated in the plaintiff's conviction in the Greenhills' Mayor's Court, demonstrates not that he was falsely accused or that he was falsely arrested or imprisoned but rather that he **suffered injury to his rights guaranteed under the constitution** - his rights to counsel, to be advised of his right to a jury trial, **to have the matter heard in a court of proper jurisdiction,** and not to be sentenced in excess of the permitted penalty. **It is not for this court to break plaintiff's complaint down into isolated incidents** which would, if taken separately, bear some token resemblance to various state common law torts. This is because **it is the series of events, the totality of acts done under color of state law,** which have allegedly deprived plaintiff of his rights under the constitution. And, it is **this continuum of events, for which there is no adequate state relief,** that comprises a cause of action under § 1983 that is broader

> than a common law tort. Indeed, Title 42 U.S.C. § 1983 is only one example of sweeping legislation enacted by Congress to provide relief for citizens for whom the state cannot or will not provide adequate relief.

Where fundamental civil rights are at issue, federal court should hesitate to abstain Jones v. Metzger, C.A.Ohio 1972, 456 F.2d 854. While the exercise of abstention is discretionary, federal courts have a special duty to exercise jurisdiction in civil rights cases. Cochran v.Ensweller, D.C.Ind.1974, 372 F.Supp. 471. Devil v. Sosbe, C.A.1972, 465 F.2d 169 held the use of abstention in cases involving civil rights is not to be encouraged.

Petitioner also asked for an injunction against the state court judges from taking further action against her in violation of her rights. This was in part based upon the fact that Ms Carella has

filed a suit against her, her husband and Mr Collins for the violation of her rights because Petitioner is trying to remove her from the house. The state judge is refusing to dismiss the complaint even though he knowingly lacks subject matter jurisdiction over the issues raised in the complaint.pursuant to the N.Y.S. Const. and state statute.

When there is deprivation of constitionally guaranteed right, duty of federal court to use injunctive power to interfere with conduct of state officers cannot be avoided. Woods v. Wright, C.A. Ala.1964, 344 F.2d 369.

Javits v. Stevens, D.C.N.Y.1974, 382 F.Supp. 131 held:

> [5] ...Our Court of Appeals has held that:
>
> "[N]o sound reason exists for holding that federal courts should not have the power to issue injunctive relief against commission of act in

violation of plaintiff's civil rights by state judges acting in their official capacity.

Petitioner has clearly demonstrated that the family court judges lack juris- to issue any order to prejudice or defeat her case in supreme court thereby being deprived of due process.

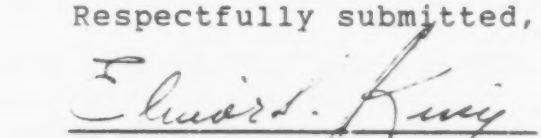
Judge Plumadore's actions in his failure to protect Mr Collins rights as he has the authority to do so pursuant to N.Y.S. Const. Art 6, § 19(a) and his part in the conspiracy to allow Judges James and Austin to issue orders in clear absence of all jurisdiction and then to rely upon these decisions for the basis of his decisions. Also, Judge Plumadore's deliberate action in stalling the supreme court proceeding until Judge Austin can try and sentence Mr Collins to jail in a **closed courtroom** is a denial of equal protection of the law.

CONCLUSIONS

The Petitioner has amply demonstrated the violations of her Constitutional Rights under Civil Rights §§ 1983 and 1985 enacted pursuant to constitutional mandate and in light of the clear rulings of the Supreme Court regarding judicial immunity and the other issues raised by Petitioner.

Petitioner, Elinor S. King, prays this court to grant certiorari, reverse the decision holding the Respondent Judges have immunity for their actions and finding that Petitioner's Constitutional rights have been violated by those acting under color of state law.

Respectfully submitted,



ELINOR S. KING
Petitioner - Pro se
108 Brunswick Road
Troy, New York 12180
(518) 274-1418

APPENDIX

Exhibit 1 (91-9317)	U.S. Court of Appeals Second Circuit, Order Signed 5/08/92 Entered 5/08/92
Exhibit 2 (91-CV-0952)	U.S. District Court Order Signed 11/29/91r Filed 11/29/91

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 8th day of May, one thousand nine hundred and ninety-two.

P r e s e n t:

Hon. James L. Oakes,
Chief Judge,
Hon. J. Edward Lumbard,
Hon. John M. Walker,
Circuit Judges.

ELINOR S. KING	)	
Plaintiff-Appellant	)	91-9317
	)	
v.	)	
	)	Filed
L. Foster James, et al.,	)	5/8/92
Defendants-Appellees.	)	

O R D E R

Elinor S. King, pro se, appeals from an order of the United States District Court for the Northern District of New York, Neal P. McCurn, Chief Judge, which dismissed King's action brought pursuant to 42 U.S.C. § 1983 (1988). For reasons

stated by the district court, we affirm.

It is hereby Ordered, Adjudged, and Decreed that the order of the district court be and it hereby is affirmed.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

ELINOR S. KING)
Plaintiff)

v.

JUDGE L. FOSTER JAMES)
STEPHEN A. FERRADINO) 91-CV-0952
JOHN A. SIMONE, JR.)
JAN H. PLUMADORE) Filed 11/29/92
JOHN AUSTIN)
JOHN J. WARNER, JR.)
Defendants)

MEMORANDUM-DECISION AND ORDER

Introduction

Plaintiff Elinor King is proceeding pro se. In her 78 page complaint, with attached exhibits totalling approximately 200 additional pages, plaintiff alleges 29 causes of action(1) and is seeking

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(1) Many of those so-called "causes of action" clearly are not; they are simply statements of the alleged facts. For example, in her "third cause of action," plaintiff recites from selected portions of her son's separation agreement and divorce decree. Complaint at 5, ¶¶ 21 and 23. Plaintiff then goes on to property. Id. at ¶¶ 24-25. Those are the only

allegations in the purported "cause of action." Plaintiff does not even attempt to assert any legal claim based upon any of those factual allegations.

$175,000.000.00 in damages against six defendants. During the relevant time frame, five of those defendants were judges in the New York State court system and one was a family court hearing examiner. It is extremely difficult, if not impossible, to discern the exact nature of these numerous claims. The complaint does expressly state, however, that plaintiff is claiming a violation of her due process and equal protection rights. Complaint at ¶ 14. In addition, although not explicitly stated, it certainly may be inferred that plaintiff is alleging a conspiracy to deprive her of her property under 42 U.S.C. § 1983. See Id. at ¶ 13.

Before answering, defendants have

moved to dismiss the complaint on five separate grounds: (1) lack of subject matter jurisdiction; (2) failure to state a claim; (3) statute of limitations; (4) eleventh amendment immunity; and (5) absolute immunity. In addition, defendants contend that the court should abstain due to an ongoing state court proceeding. Lastly, defendants are seeking sanctions, attorneys' fees and costs. As will be seen, plaintiff's complaint is subject to dismissal on any number of these various alternate theories.

Background(2)

---

(2) Defendants' recitation of the facts was rather terse and of little assistance to the court. The complaint itself is not helpful in outlining the relevant facts. So, the court was left with the task of reconstructing the factual background and procedural history of this case from the numerous exhibits attached to the complaint. Those exhibits consist of, for the most part, copies of orders and portions of transcripts in

various state court proceedings.

This lawsuit has its origins in the divorce of plaintiff's son, Charles E. Collins, III, from Arlene Carella. Divorce proceedings began some time in 1980 when Mr. Collins and Ms. Carella entered into a separation agreement. Mr. Collins and Ms Carella were legally divorced on August 3, 1981. Thereafter, Mr. Collins and Ms Carella were involved in a number of state court proceedings, resulting in a host of orders, decisions, and judgments. For example, Mr. Collins brought an action to modify the judgment of divorce, seeking custody of their three children. In addition, over the years Ms. Carella brought several violation petitions against Mr. Collins for his failure to comply with court ordered support obligations.

Although the specifics of those various proceedings are not necessary to an understanding of this case, one order is of particular significance. Several years after the divorce was final, in 1984, with the help of plaintiff and her husband, Mr Collins bought a house in Saratoga County and turned possession over to his ex-wife to reside in with their three children. Complaint, Ex. 27 thereto at 4. Ms. Carella and the children have continued to reside there since that time. On April 22, 1986, defendant James, a New York State Family Court Judge, granted Ms. Carella "exclusive possession" of that property. Id., Ex. 12 thereto at 5, ¶ 1. Thereafter on November 6, 1986, Mr. Collins transferred his interest in the subject property to plaintiff. Id.., Ex. 6 thereto. As a result of that transfer, plaintiff and

her husband became the sole owners of the subject property. The gist of plaintiff's complaint herein sems to be that the effect of that order by defendant James was to deprive plaintiff of her property without due process of law.

On approximately July 13, 1989, plaintiff anc her husband commenced a real property proceeding in state court, essentially seeking tc evict Ms. Carella from the house. Id., Ex. 40 thereto. That actic n has been proceeding alcng, albeit slowly. In February, 1990, defendant Plumadore, a New York State Supreme Court Justice, denied the motion by plaintiff and her husband for summary judgment therein. Id., Ex. 47 thereto. The record before this court does not establish what has transpired since then, except that on January 23, 1991, the court ncted that based upon his

answer, Mr. Collins was no longer a party to that action. Id., Ex. 55 thereto. What is clear, however, is that the state court action is still pending.

Plaintiff and her family are no strangers to litigation. In fact, in 1990, plaintiff's son attempted to remove the family court proceeding to federal court. Mr. Collins was unsuccessful in that effort; Judge Howard G. Munson remanded the matter back to state court. Mr. Collins then eventually commenced three actions in federal court, all assigned to Judge Thomas McAvoy. Judge McAvoy dismissed all three actions and awarded sanctions against Mr. Collins in one of the suits, finding that he had "engaged in vexatious and baseless litigation fully aware that his claims are destined to fail." Affidavit of Mary Ellen Clerkin (September 19, 1991),

Ex. A thereto at 4. As previously mentioned, plaintiff is a party to the real property state court action, but she was not a party to any of the previous federal court cases.

Discussion

I. Subject Matter Jurisdiction

Although not the first argument raised by defendants, the court will address lack of subject matter jurisdiction at the outset, because if defendants are correct in that regard, the court need not consider the other reasons for dismissal advanced by them.

The complaint is very difficult to understand, but it appears that plaintiff is challenging a number of prior orders and decisions, made in various state court proceedings, all os which pertain to the divorce of her son. Defendants contend, under what has come to be known

as the Rooker-Feldman doctrine, that this court lacks jurisdiction to review those state court decisions. In Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16, 44 S.Ct. 149, 150, 68 L.Ed. 362 (1923), the Supreme Court held that an appeal through the state courts to the Supreme Court of the United States constituted the exclusive procedure by which the challenged state court judgment might be reviewed for constitutional error. The Court then explained that under the predecessor to 28 U.S.C. § 1257:(3)

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(3) That statute provides, in relevant part:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certioari. . . .

28 U.S.C. §1257 (a) (West Supp. 1991).

> If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. . . . Under the legislation of Congress, no court of the United Stated other than this court could entertain a proceeding to reverse or modify the judgment for errors of that character. . . . To do so would be an exercise of appellate jurisdiction.

Id. at 415-16, 44 S.Ct. at 150. In Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 90 S.Ct. 1739, 26 L.Ed2d 234 (1970), the Supreme Court reaffirmed the Rooker doctrine, stating:

> Again, lower federal courts possess no power whatever to sit in direct review of state court decisions. If [the party seeking the injunction] was adversely affected by the state court's decision, it was free to seek vindication of its federal right in the [state] appellate courts and ultimately, if necessary,

in this court.

Id. at 296, 90 S.CT. at 1748. And more recently, in District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983), the Court recognized the continuing validity of Rooker:

> The District of Columbia Circuit properly acknowledged that the United States District Court is without authority to review final determinations of the District of Columbia Court of Appeals in judicial proceedings. Review of such determinations can be obtained only in this court. . . .

Id. at 476, 103 S.Ct. at 1311.

In Texaco Inc. v. Pennzoil Co., 784 F.2d 1133 (2d Cir. 1986), rev'd on other grounds, 481 U.S. 1, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987), the Second Circuit offered the following summary of the Rooker-Feldman doctrine:

> In short, an inferior federal court established by Congress pursuant to

> Art. III, § 1, of the Constitution may not act as an appellate tribunal for the purpose of overruling a state court judgment, even though the judgment may rest on an erroneous resolution of constitutional or federal law issues. The exclusive procedure for federal review is that specified by 28 U.S.C. § 1257.

Id. at 1142. It should be noted that there is no requirement that a state court judgment be fully appealed through the state system as a condition precedent to the application of the Rooker-Feldman doctrine. See Texaco, 784 F2d at 1142-43.

The Rooker-Feldman doctrine generally arises in a situation where a plaintiff seeks to collaterally attack, in a federal action, an adverse judgment rendered against him or her in state court. In other words, the plaintiff is usually attempting to convert the appeal of a state court judgment into a federal action under 42 U.S.C. § 1983. At first glance, this does not seem to be the

situation here, because, with the exception of the real property proceeding, which will be fully discussed herein, plaintiff King was not a party to any of the state court proceedings which she now seems to be challenging. And, therefore, arguably, she is not trying to convert the appeal of a state court judgment into a § 1983 action.

Closer analysis reveals, however, that the Rooker-Feldman doctrine is applicable here. That is so because even though plaintiff was not a party to those various state court proceedings, she did have standing to appeal as one"aggrieved" by the judgments which affected her property interest. The general rule under New York law is that only an "aggrieved party" may appeal. See N.Y. Civ. Prac. L. & R. § 5511 (McKinney 1978). That statute has been expansively interpreted by the

New York courts, however, and under § 5511 a nonparty may appeal when that party may be bound by a judgment if he or she does not take affirmative action in the litigation to protect his or her rights. Auerbach v. Bennett, 64 A.D.2d 98, 408 N.Y.S. 2d 83 (2d Dep't 1978), mod'd on other grounds, 47 NY2d 619, For example, in People v. Dobbs Ferry Medical Pavillion, 40 A.D.2d 324, 340 N.Y.S.2d 108 (2d Dep't), aff'd, 33 N.Y.2d 584, 347 N.Y.S.2d 452 (1973), the court held that nonparty doctors had standing yo appeal from an injunction barring the performing of abortions at certain premises, because that injunctiçn, by its terms, extended to all persons having knowledge thereof. ID. at 325, 340 N.Y.S.2d at 110. Similarly, in Triangle Pacific Bldg. Products Corp. v. Nat. Bank, 62 A.D.2d 1017, 404 N.Y.S.2d 121 (2nd Dep't 1978), the court

held that where a turnover order would consume an entire bank account, the person who claimed an interest in the account and who was presumptive owner of one-half of the account proceeds was "aggrieved" by the order and had standing to appeal therefrom, even though she was not named in the special proceeding. Id. at ___, 404 N.Y.S.2d at 122.

Surely, plaintiff King was aggrieved by the state court decisions pertaining to the residence in which she has partial ownership interest. Plaintiff King was particularly aggrieved by the order granting Ms. Carella "exclusive possession" of property in which she [Ms. King] has a partial ownership interest. Thus, as one aggrieved by such an adverse order, Ms. King could have appealed. She did not. Therefore, the Rooker-Feldman doctrine precludes plaintiff from now

coming into this federal court and essentially seeking review of state court judgments, decisions and/or orders, which she could have appealed through the state system, and, if necessary, to the Supreme Court of the United States. Consequently, defendants' motion to dismiss for lack of subject matter jurisdiction must be granted insofar as the complaint is based prior state court decisions, judgments, and/or orders, by which this plaintiff was aggrieved.

The Court makes one final observation. It does not appear to the court that plaintiff King is also seeking to attack any orders or decisions already rendered in the state court real property proceeding, to which she is a party. To the extent that she may be however, the Rooker-Feldman doctrine would clearly preclude the exercise of this court's

jurisdiction in that regard as well.

II. Abstention

With respect to any claims arising out of plaintiff's pending state court proceeding, defendants argue that the court should abstain under Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971). While recognizing that abstention from the exercise of a federal court's jurisdiction is rare, Colorado River Water Conservation District v. United States, 424 U.S. 800, 96 S.Ct. 1236, 47 LEd/2d 483 (1976), nonetheless, this court concludes that Younger abstention is proper here.(4) As

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(4) Although Younger involved an ongoing state criminal proceeding, application of the principles enunciated therein have been extended to state civil proceedings and state administrative proceeding where there is a means available to review constitutional claims. See New Orleans Public Service, Inc. v.

Council of New Orleans, 491 U.S. 350, ___, 109 S.Ct. 2506, 2516, 105 L.Ed.2d 298 (1989); Ohio Civil Rights Com. v. Dayton Christian Schools, Inc., 477 U.S. 619, 626-28, 106 S.Ct. 2718, 2722-23, 91 L.Ed.2d 512 (1986); Middlesex County Ethics Comm. v. Garden State Bar Ass'n., 457 U.S. 423, 432, 102 S.Ct. 2515, 2521, 73 L.Ed.2d 116 (1982); Huffman v. Pursue, Ltd., 420 U.S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975).

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the Second Circuit explained in Cecos Int'l, Inc. v. Jorling, 895 F2d 66 (2d Cir. 1990):

> Abstention under Younger is fueled by the notion that courts of equity should not intervene where a party has an adequate remedy at law, . . ., and by concerns of comity and federalism express in 'the belief that the National Government will fare better is the states and their institutions are left free to perform their separate functions in their separate ways.'

Id. at 70 (quoting Younger, 401 U.S. at 44, 91 S.Ct. at 750). More recently, in Temple of Lost Sheep Inc. v. Abrams, 930 F.2d 178. 183 (2d Cir. 1991), quoting

from Steffel v. Thompson, 415 U.S. 452, 460-61, 94 S.Ct. 1209, 1216, 39 L.Ed2d 505 (1974), the Second Circuit explained the underlying purpose of Younger abstention as follows:

> [t]hat a pending state proceeding, in all but unusual cases, would provide the federal plaintiff with the necessary vehicle for vindicating his constitutional rights, and, in that circumstance, the restraining of in ongoing [state proceeding] would entail an unseemly failure to give effect to the principle that state courts have the solemn responsibility, equally with the federal courts to guard, enforce, and protect every right granted or secured by the constitution of the United States.

Id. at 183. Younger abstention, involving as it does two pending proceedings, gives rise to conflicting jurisdictional duties between the state and federal tribunals, "[w]ith the attendant possibilities that maintenance of the federal action will either result in duplicative legal proceedings or a disruption of the state

proceedings." Id. at 182. Thus, Younger abstention "'contemplates the outright dismissal of the federal suit, and the presentation of all claims, both state and federal, to the state courts.'" Id. (emphasis added) (quoting Gibson v. Berryhill, 411 U.S. 564, 577, 93 S.Ct. 1689, 1697, 36 L.Ed.2d 488 (1973).

It is well settled that a determination of whether to refuse to assume jurisdiction under Younger depends upon a finding that (1) there is an ongoing state proceeding; (2) an important state interest is implicated; and (3) the plaintiff has an avenue open for review of his or her constitutional claims in the state court. CECOS, 895 F.2d at 70 (citing Middlesex County Ethics Comm. v. Garden State Bar Ass'n., 457 U.S. 423, 432, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982)). See also Christ the King

Regional High School v. Culvert, 815 F.2d 219,224 (2d Cir.), cert. denied, 484 U.S. 830, 108 S/Ct. 102, 98 L.Ed.2d 113 (1987). The court will consider each of those elements in turn.

Clearly there is an ongoing state proceeding here. It is undisputed that plaintiff's real property proceeding is still pending in state court. The second requirement for the proper invocation of Younger abstention is also present here; that is important, vital state interests are implicated in the state proceeding. The area of domestic relations law, which is part of the state court real property proceeding by virtue of the fact that the current occupant of the premises is there based upon a court order entered in a family court matter, is certainly an area of important state interest. See, Fay v. South Colonie Cent. School Dist., 802

F.2d 21, 32 (2d Cir. 1986) (domestic relations law matter of important state interest). Likewise, it is difficult to conceive of an area in which the state has a more substantial, legitimate interest in regulation, than in the area of state real property law. Accord, New Orleans Public Serv. v. Council of New Orleans, 491 U.S. at ___, 109 S.Ct. at 2516-17 (Focus of inquiry in determining whether state had a substantial, legitimate interest in pending proceeding for purposes of Younger abstention, is whether state had substantial, legitimate interest in regulating certain activity).

Finally, there is an avenue open for review of plaintiff Kings' constitutional claims in the state court real property proceeding. There is nothing in the real property law indicating that such a proceeding is not the appropriate means

by which to raise a constitutional claim relative to such property.(5) And, as the

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(5) Indeed, the scope of the state court action has already widely broadened beyond that of a simple eviction proceeding. Ms. Carella is asserting that the 1986 conveyance by Mr. Collins to his mother was fraudulent. In addition, Ms. Carella is seeking to impose a constructive trust.

Fourth Circuit so articulately stated in Cinema Blue of Charlotte, Inc. v. Gilchrist , 887 F.2d 49 (4th Cir. 1989), cert. denied, 110 S.Ct. 1479, 108 L.Ed2d 616 (1990):

> In this, as in such matters generally, we indulge the assumption that the state courts are willing and able to vindicate federal constitutional rights. The abstention condition is merely that there be a pending state proceeding in which an opportunity to raise the constitutional challenge will be available to the federal plaintiff. . . . Though we may not be sure exactly what procedural mechanism for doing so will be most appropriate, it is

> not necessary that we be. It suffices to be confident that it can be raised in some appropriate way, and that we are.

Id. at 54 (citation omitted). In short, based upon the foregoing, this court must decline to exercise its jurisdiction over plaintiff's constitutional claims because the pending state court proceeding provides this plaintiff with the necessary vehicle for vindication of her constitutional rights. Thus, the court must also grant defendants' motion to dismiss plaintiff's complaint, with respect to any claims arising out of the ongoing state court proceeding, on the basis of Younger abstention.

III. Failure to State a Claim

In light of the foregoing, plaintiff's only remaining claim is a conspiracy under 42 U.S.C. § 1983. That claim too cannot be allowed to stand. As

this court recently stated in Upper Hudson Planned Parenthood, Inc. v. Doe, 1991 U.S. Dist. LEXES 13063 (N.D.N.Y. September 12, 1991):

> The Second Circuit "[h]as recognized that certain claims are so easily made and can precipitate such protracted proceedings with such disruption of governmental functions that, despite the general rule of Conley v. Gobson, 355 U.S. 41 (1957), detailed fact pleading is required to withstand a motion to dismiss." . . . . Thus, the Second Circuit has consistently held that complaints containing only "conclusory," "vague," or "general allegations" of a conspiracy to deprive a person of constitutional rights will be dismissed. Ostrer v. Aronwald, 567 F.2d 551, 553 (2d Cir. 1977) and cases cited therein). In Ostrer the Second Circuit further explained that "[d]iffuse and expansive allegations [of a conspiracy] are insufficient, unless amplified by specific instances of misconduct." Id. (citing Build of Buffalo, Inc. v. Sedita, 441 F.2d 284. 288 (2d Cir. 1971). Thus, in Ostrer the Court held: [a]ppellants' unsupported allegations, which fail to specify in detail the factual basis necessary to enable appellees intelligently to prepare their defense, will not suffice to sustain a claim of governmental conspiracy to de-

> prive appellants of their constitutional rights. Id. (citations omitted).

Id. at *33 - *34 (citation omitted) (footnote omitted).

Applying those standards to the present case, it is clear that plaintiff has not adequately pled a conspiracy to deprive her of her constitutional rights. In her complaint, plaintiff makes only the vague, conclusional allegation that:

> Judges James, Ferradion, Simone, Austin, Plumadore and Hearing Examiner Warner had an agreement with each other and with Ms Carella and her attorneys, . . . to rule favorably on Ms Carella's petitions, to deprive Plaintiff of her property, to force Plaintiff to support Ms Carella and to frustrate any action kby Plaintiff and her son,...

Complaint at ¶ 13 (emphasis added). She does not specifically plead any overt acts; nor does she provide a basis in fact for this claim. Apart from that one allegation, there are no other allega-

tions in the complaint pertaining to this alleged conspiracy. Indeed, there are not even any allegations from which it can be inferred that such a conspiracy existed. Thus, without more, plaintiff's conspiracy claim cannot be allowed to stand. See Polur v. Raffe, 912 F.2d 52, 56 (2d Cir. 1990) ("vague, prolix allegations of a conspiracy without pleading any overt acts or providing a basis in fact" insufficient to state a conspiracy cause of action); Rigby v. Coughlin, 730 F.Supp. 1196, 1200 (N.D.N.Y. 1990) (dismissing conspiracy claim were plaintiffs "simply allege[d] that the defendants 'conspired together', and 'knowingly acted in collusion'. . . ."). (6) Defendants' motion to

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(6) See also Sommer v. Dixon, 709 F.2d 173, 175 (2d Cir. 1983), cert. denied, 464 U.S. 857, 104 S.Ct. 177, 711 L.Ed.2d 158 (1983) (affirming dismissal of complaint where "alle-

gations as to a conspiracy [were] . . . vague and unsupported by description of particular overt acts."); Powell v. Workmen's Compensation Bd., 327 F.2d 131, 137 (2d Cir. 1964) (affirming dismissal of complaint where plaintiff failed to "[a]llege with at least some degree of particularity overt acts which defendants engaged in which were reasonably related to the promotion of the claimed conspiracy.")

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dismiss the complaint, insofar as it alleges a conspiracy claim, therefore is also granted.

IV. Other Bases for Dismissal

Because the court has determined that dismissal of the complaint is appropriate for the reasons just discussed, it is not essential that the court consider the other grounds offered by defendants as a basis for dismissal. Primarily for the benefit of plaintiff, however who is proceeding without counsel, the court will briefly address those other grounds.

First, with respect to the statute of limitations, defendants are correct that a § 1983 action is governed by the three year residual or general personal injury statute of limitations. See Owens v. Okure, 488 U.S. 235, 109 SCt. 573, 102 L.Ed.2d 594 (1989). In the present case, plaintiff filed her complaint on August 22, 1991. Therefore clearly insofar as her complaint states claims based upon events which happened prior to that three year time frame, such claims are time barred.

Second, defendants rightly contend that any claim for monetary damages against the defendants in their official capacities is barred by the eleventh amendment. See Tekkno Laboratories, Inc. v. Perales, 933 F2d 1093, 1097 (2d Cir. 1991) (citing Edelman v. Jordan, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662

(1974)). Nowhere in her complaint did plaintiff specifically state whether she is suing defendants in their official or in their personal capacities. Presumably it is the former because all of the allegations against these defendants pertain solely to acts performed by them in their capacity as judicial officers. Thus, the eleventh amendment is a bar to all of plaintiff's claims for monetary damages against these defendants in their official capacities. It should be noted that plaintiff is only seeking to recover monetary relief; she is not seeking injunctive relief of any kind. See Complaint at ¶¶ 163-166.

Third, in a similar vein, defendants argue that they are absolutely immune from liability here because the allegations against them arise out of events which occurred while they were acting as

judicial officers. In determining whether a judge is absolutely immune from civil liability, the focus is on the nature of the act performed. The Second Circuit in Maestri v. Jutkofsky, 860 F/2d 50 (2d Cir. 1988), cert. denied, 489 U.S. 1011, 109 S.Ct. 1132, 1011 L.Ed.2d 193 (1989), held that "[a] judge who performs a judicial act in excess of his or her jurisdiction is immune to civil suit; a judge who acts in the clear absence of jurisdiction is not." Id. at 52. The Court in Maestri explained that a "[j]udge will be denied immunity only where it appears, first, that the judge acted in the clear absence of jurisdiction, and second, that the judge must have known that he or she was acting in the clear absence of jurisdiction." Id. at 53. This test, as articulated by the Second Circuit, is thus comprised of two

elements - one objective, that is "[t]hat jurisdiction is clearly absent, i.e., that no reasonable judge would have thought jurisdiction proper, . . .;" and the second subjective, that is [t]hat the judge whose actions are questioned actually knew or must have known of the jurisdictional defect . . . ." Id. Application of that test in Maestri resulted in a finding that the judge was not entitled to immunity because he knowlingly acted in the clear absence of territorial jurisdiction, when he signed arrest warrants resulting in the incarceration of two individuals.

In the present case, at oral argument plaintiff stressed that defendant James acted in the clear absence of jurisdiction in awarding Ms. Carella exclusive possession of the subject property. It is clear from her complaint, however,

that plaintiff is also making that argument with respect to defendants James, Ferradino, Simone, Austin and Warner. See Complaint at 3, ¶ 11.(7) To support her

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(7) Given the fact that plaintiff did not allege that defendant Plumadore acted in the absence of jurisdiction, the court assumes that plaintiff is not challenging his jurisdiction. Therefore defendant Plumadore is clearly enitled to absolute immunity in that the allegatgions against him relate only to judicial acts performed by him.

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argument, plaintiff is apparently relying upon a letter by Justice Plumadore in which it is stated that, "[F]amily Court has no jurisdiction over title, marital or otherwise; . . . ." Complaint, Ex. 45 thereto at 2 (emphasis in original). Assuming arquendo that plaintiff is correct (that the defendants other than defendant Plumadore acted in the clear

absence of jurisdiction), and accepting as true, as the court must on this motion, the allegations that defendants knew they were so acting, the court is nonetheless convinced that the complaint against these defendants is properly dismissed, based upon the other grounds for dismissal discussed herein. Thus in conclusion, defendants' motion to dismiss is hereby granted and plaintiff's complaint is dismissed.

V. Sanctions

While defendants' frustration with this litigation is certainly understandable, sanctions are not appropriate for two reasons. The first is that defendants seem to be basing their request, at least in part, on the fact that there have been other federal actions arising out of these facts. Yet defendants are ignoring

the obvious: this plaintiff was not a party to those other actions. She should not be punished for her son's apparent abuse of the judicial process. Moreover, plaintiff's claims herein are different from those asserted by her son and deemed "baseless" by Judge McAvoy.

Secondly, plaintiff is appearing pro se, and while that in and of itself would not excuse an abuse of the judicial process, it does not appear, at least that this point, that she has engaged in sanctionable conduct. Plaintiff's complaint has been dismissed in part, based upon legal principles, which even for lawyers are not always easy to understand and apply. It would be unduly harsh to sanction a layperson under these circumstances. The motion for sanctions by the defendants is therefore denied.

VI. Cross-Motion for Preliminary Injunction

Obviously, plaintiff's cross-motion for a preliminary injunction has been rendered moot by the dismissal of the complaint.

IT IS SO ORDERED.

DATED: November 29, 1991
Syracuse, New York

/s/
Neal P. McCurn
Chief, U.S. District Judge